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Homes Commission Act. Any proposed amendments to any terms or provisions of the Hawaiian Homes Commission Act by the State must also specifically state that the proposed amendment proposes to amend the Hawaiian Homes Commission Act. Any state enactment that impacts any of the criteria in §48.20 shall have no effect on the provisions of the HHCA or administration of the Trust, except pursuant to this part.

**PART 49—PALEONTOLOGICAL RESOURCES PRESERVATION**

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### Subpart A—Preserving, Managing, and Protecting Paleontological Resources

#### § 49.1 What does this part do?

This part:

(a) Directs the Bureau of Land Management (BLM), Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS) (collectively referred to as “the bureaus”) to preserve, manage, and protect paleontological resources on Federal land using scientific principles and expertise;

(b) Coordinates paleontological resources management among the bureaus;

(c) Promotes public awareness; provides for collection under permit; clarifies that paleontological resources cannot be collected from Federal land for sale or purchase; establishes civil and criminal penalties; sets curation standards; and

(d) Authorizes casual collecting of common invertebrate and plant paleontological resources from certain BLM-administered land and certain Reclamation-administered land.

#### § 49.5 What terms are used in this part?

The terms used in this part have the following definitions.

*Act* means title VI, subtitle D of the Omnibus Public Land Management Act on Paleontological Resources Preservation (16 U.S.C. 470aaa–470aaa–11).

*Ad Hoc Board* means an Ad Hoc Board of Appeals appointed by the Director, Office of Hearings and Appeals, Department of the Interior.

*Approved repository* means a Federal or non-Federal facility that provides for the curation of paleontological resources and that is approved by the Federal land manager to receive collections made under this part.

*Associated records* means original records or copies thereof, regardless of format, that include but are not limited to:

(1) Primary records relating to identification, evaluation, documentation, study, preservation, context, or recovery of a paleontological resource;

(2) Public records including, but not limited to, land status records, bureau reports, publications, court documents, and agreements; and

(3) Administrative records and reports generated during the permitting process that pertain to survey, excavation, or study of the paleontological resource.

*Bureau* means Bureau of Land Management (BLM), Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (FWS), or National Park Service (NPS).

*Collection* means paleontological resources that are removed from Federal land under the provisions of this part, and associated records.

*Consumptive analysis* means the alteration or destruction of a paleontological specimen or portion of a specimen for scientific research.

*Cost of response, restoration, and repair* means the costs to respond to a violation of the provisions of this part or a permit issued under this part and the costs of restoration and repair of the paleontological resources or paleontological sites damaged as a result of the violation. Those costs are described in greater detail in § 49.610.

*Curation* means those activities pertinent to management and preservation

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of a collection over the long term according to professional museum and archival practices, including at a minimum:

(1) Accessioning, cataloging, labeling, and inventorying a collection;

(2) Identifying, evaluating, and documenting a collection;

(3) Storing and maintaining a collection using appropriate methods and containers, and under appropriate environmental conditions and physical security controls;

(4) Periodically inspecting a collection and taking such actions as may be necessary to preserve it;

(5) Providing access and facilities to study a collection;

(6) Handling, cleaning, sorting, and stabilizing a collection in such a manner as to preserve it; and

(7) Lending a collection, or parts thereof, for scientific, educational or preservation purposes.

*Day* means a 24-hour calendar day.

*DCHD* means the Departmental Cases Hearings Division, Office of Hearings and Appeals, Department of the Interior.

*Department or DOI* means the Department of the Interior.

*Deposit* means placing a collection in an approved repository.

*Federal land* means land controlled or administered by the Secretary of the Interior, except for Indian land.

*Federal land manager* means the bureau personnel who implement the Act. Each bureau may have multiple Federal land managers. For paleontological resources from lands administered by BLM, "Federal land manager" is synonymous with "authorized officer." Federal land managers draw upon appropriate scientific and technical expertise to make decisions and take actions.

*Fossilized* means evidence or remains of once-living organisms preserved by natural processes, such as burial in accumulated sediments, preserved in ice or amber, permineralized, or replaced by minerals, which may or may not alter the original organic content.

*Indian land* means land of federally recognized Indian Tribes or Indian individuals which is either held in trust by the United States or subject to a re-

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striction against alienation imposed by the United States.

*Nature* means features, characteristics, or attributes of the paleontological resource.

*OHA* means the Office of Hearings and Appeals, DOI.

*OHA Director* means the Director, Office of Hearings and Appeals, DOI.

*Paleontological resource* means any fossilized remains, traces, or imprints of organisms preserved in or on the Earth's crust, except for:

(1) Those that are found in an archaeological context and are an archaeological resource as defined in section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb(1)); or

(2) "Cultural items," as defined in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001); or

(3) Resources determined in writing by the Federal land manager to lack paleontological interest or not provide information about the history of life on earth, based on scientific and other management considerations.

*Paleontological site* means a locality, location, or area where a paleontological resource is found; the site can be relatively small or large.

*Preparation* means separation of paleontological resources from entombing matrix.

*Specific location* means any description or depiction of a place in such detail that it would allow a person to find a paleontological resource or the site from which it was collected.

*State* means one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

*Working collection* means collections that, while still Federal property, are not intended for long-term preservation and care as museum property since they do not further paleontological knowledge, public education, or management of paleontological resources. Working collections are intended for use during education or ongoing research and may be consumed during the analysis process according to bureau policy. Some specimens and items may subsequently be designated

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museum property. Working collections may be discarded when it is determined there is no longer a need for the collection for future research or education or upon completion of the ongoing research according to standards set in bureau policy.

### **§ 49.10 Does this part affect existing authorities?**

No. This part preserves the authority of the Secretary of the Interior and the bureaus under this and other laws and regulations to preserve, manage, and protect paleontological resources on Federal land.

### **§ 49.15 When does this part not apply?**

(a) The regulations in this part do not invalidate, modify, or impose additional restrictions or permitting requirements on mineral, reclamation, or related multiple-use activities which the Department or a bureau may authorize or for which permits may be issued under the general mining, mineral leasing, geothermal leasing, or mineral materials disposal laws.

(b) The regulations in this part do not apply to Indian land.

(c) The regulations in this part do not apply to any land other than Federal land as defined in this part, or resources other than paleontological resources as defined in this part.

(d) On lands administered by BLM or Reclamation, the following are not subject to this part:

(1) Fossilized minerals, including coal, oil shale, bitumen, lignite, asphaltum, tar sands, and other economic minerals that are subject to existing mining or mineral laws and geological units and industrial minerals, including, but not limited to, phosphate, limestone, diatomaceous earth, coquina, chalk beds, and paleosols. However, paleontological resources that occur within in these units may be subject to this part;

(2) Petrified wood, defined at 30 U.S.C. 611.

(3) Conodonts.

### **§ 49.20 Does this part create new rights or entitlements?**

(a) This part does not create any right, privilege, benefit, or entitlement for any person who is not an officer or

employee of the United States acting in that capacity.

(b) Only an officer or employee of the United States acting in that capacity has standing to file a civil action in a court of the United States to enforce this part.

### **§ 49.25 What information concerning the nature and specific location of paleontological resources is confidential?**

(a) Information concerning the nature and specific location of a paleontological resource is exempt from disclosure under the Freedom of Information Act and any other law unless the Federal land manager determines that the disclosure would:

(1) Further the purposes of the Act;

(2) Not create risk of harm to or theft or destruction of the resource or site containing the resource; and

(3) Be in accordance with other applicable laws.

(b) The Federal land manager may define bureau-specific confidentiality requirements that are consistent with paragraphs (a)(1) through (3) of this section.

(c) Information that is shared with a contractor, permittee, repository, or other partner in furtherance of the Act is not considered an official public disclosure for purposes of the Freedom of Information Act.

### **§ 49.30 How will the bureaus conduct inventory, monitoring, and preservation activities?**

(a) The bureaus will develop plans and procedures for the inventory and monitoring of paleontological resources on and from Federal land in accordance with applicable laws and regulations.

(b) The bureaus will preserve, manage, and protect paleontological resources on and from Federal land using scientific principles and expertise.

(c) Activities under paragraphs (a) and (b) of this section will be coordinated with other agencies, non-Federal partners, the scientific community, and the general public where appropriate and practicable.

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**§ 49.35 How will the bureaus foster public education and awareness?**

The bureaus will establish programs to increase public awareness about the significance of paleontological resources on or from Federal land. This effort will be coordinated with other agencies, non-Federal partners, the scientific community, and the general public where appropriate and practicable.

**§ 49.40 May the bureaus restrict access to an area?**

(a) The Federal land manager may restrict access to an area or close areas to collection of paleontological resources to protect paleontological or other resources or to provide for public safety.

(b) The regulations in this part do not preclude the use of other authorities that provide for area restrictions or closures on Federal land.

**Subpart B—Paleontological Resources Permitting; Requirements, Modifications, and Appeals**

**§ 49.100 When is a permit required to collect paleontological resources on Federal land?**

(a) A permit is required for any person to collect paleontological resources, except as allowed in provisions in subpart I of this part.

(b) A permit may be required by a Federal land manager for paleontological research or paleontological consulting activities that do not involve collection.

(c) A permit is required for Federal Government personnel, agents, or contractors to collect paleontological resources unless the bureau authorizes the action by programmatic or other means.

**§ 49.105 Who can receive a permit?**

(a) Applicants who demonstrate that they meet the qualification requirements described in § 49.110, who provide a complete application as described in § 49.115, and whose proposed activity meets the issuance criteria described in § 49.120 may receive a permit.

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(b) Persons who do not meet the qualification requirements described in § 49.110, who do not provide a complete application as described in § 49.115, or whose proposed activity does not meet the issuance criteria described in § 49.120 will not receive a permit. However, they can perform work under an issued permit when appropriately supervised by a permittee.

**§ 49.110 What are permit applicant qualification requirements?**

(a) Permit applicant qualification requirements include:

(1) A degree from an accredited institution in a field of study relevant to paleontology, or demonstration of progress toward an advanced degree from an accredited institution in a field of study relevant to paleontology, or demonstrated training and experience commensurate to the nature and scope of the proposed activities;

(2) Experience in collecting, analyzing, summarizing, and reporting paleontological data, and preparing collections for long-term care; and

(3) Experience in equipping, staffing, organizing, conducting, and supervising fieldwork similar to the type, nature, and scope of the project proposed in the application.

(b) Past performance by the applicant will be considered. Past performance includes compliance with previous permits, relevant civil or criminal violations, or current indictments or charges.

**§ 49.115 Where must a permit application be filed and what information must it include?**

(a) A permit applicant must submit an application to the bureau that administers the Federal land where the proposed activity would be conducted. It is the permit applicant's responsibility to determine which bureau has jurisdiction, use that bureau's permit application form and process, and respond to that bureau's requests for information in a timely manner.

(b) Required information includes:

(1) The applicant's name, affiliation, and contact information.

(2) A current resume for the applicant and all other persons who oversee

work under the permit, and any additional information demonstrating that the applicant possesses the qualifications required by § 49.110.

(3) A description, proposed start and end dates, and maps and other location information for the proposed work.

(4) Purpose, methods, and need for the proposed work, a scope of work or research plan, duration of the proposed work, logistical information, description of any paleontological resource collections that may be made under the permit, description of any existing collections known to have originated in this area, timetable for transfer to the proposed repository, and any additional information that will help the federal land manager identify the extent, nature, and potential impacts of the proposal.

(5) Bonding information, if required by the bureau.

(6) Name, location, and contact information of a proposed repository that agrees to receive the collection made under the permit.

(7) Anticipated costs of the permitted activity, including paleontological resource preparation and curation, and identification of the persons or organizations that will be responsible for these costs if the permit is approved;

(8) List of the applicant's past permits and record of compliance and non-compliance.

(9) An explanation of how the proposed collection would further paleontological knowledge or public education, or management of paleontological resources.

**§ 49.120 How will a bureau make a decision about a permit application?**

(a) The Federal land manager will evaluate the permit application and analyze impacts in accordance with applicable laws, regulations, and policies.

(b) The Federal land manager may issue a permit upon determining that:

(1) The applicant possesses the qualifications required by § 49.110;

(2) The permitted activity and any collection that would be made under the proposed permit would further paleontological knowledge, public education, or management of paleontological resources;

(3) The permitted activity would be consistent with the purpose and management objectives defined for the Federal land;

(4) The permitted activity would be conducted in a manner that would avoid or minimize adverse effects to significant natural or cultural resources; and

(5) An approved repository has confirmed in writing that it is willing to accept the collection in accordance with the terms and conditions in the permit.

**§ 49.125 What terms and conditions will a permit contain?**

(a) Permit terms and conditions will include but are not limited to:

(1) Permittee and the approved repository named in the permit must not release, disclose, or share information about the specific location of paleontological resources unless the Federal land manager determines that the release, disclosure, or sharing is consistent with applicable policy.

(2) Permittee is responsible for maintaining a safe and secure paleontological site and for protecting paleontological and other resources from harm resulting from the work under the permit. Permittee is responsible for the actions of all persons working under the permit or invited by permittee to the site.

(3) Permittee, or a designee approved by the Federal land manager and named on the permit, must be onsite at all times when fieldwork is in progress and have a copy of the signed permit on hand.

(4) Permittee must comply with all vehicle or access restrictions, safety or environmental restrictions, local safety conditions or restrictions, and applicable Federal, State, and local laws.

(5) Permittee must acknowledge that the geographic area within the scope of the permit may be subject to other uses, and will take steps to avoid or minimize potential conflicts with such uses.

(6) Permittee will record specific location according to bureau requirements or permit terms and conditions.

(7) Permittee must report suspected or apparent resource damage or theft of paleontological or other resources to

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the Federal land manager as soon as possible, but not to exceed 48 hours after learning of the suspected or apparent damage or theft.

(8) Permittee must safeguard all paleontological resources collected under the permit and related data from the time of initial recovery until the collection is deposited with the approved repository named in the permit.

(9) Permittee acknowledges that all paleontological resources collected under the permit are Federal property.

(10) Permittee must deposit the collection in the approved repository named in the permit by the date specified in the permit and provide the bureau with a receipt for collections signed by an appropriate repository official who is not the permittee.

(11) A copy of the permit and other associated records must be kept with the collection during transport and provided to the approved repository named in the permit.

(12) If the permittee has not transferred the collection to the approved repository named in the permit by the date specified in the permit, the permittee must provide the Federal land manager a complete list and description of all paleontological resources collected and the current location of the paleontological resources.

(13) Permittee is responsible for the costs of the permitted activity, including fieldwork, data analysis, specimen preparation, report preparation, and initial curation of the collection and its associated records unless otherwise addressed in a separate written document.

(14) Permittees must submit annual reports, other reports, and copies of publications resulting from the collections made under the permit to the Federal land manager in accordance with bureau format and deadlines.

(15) Permittee must acknowledge the permitting bureau and the approved repository named in the permit in any report, publication, paper, news article, film, television program, or other media resulting from the work performed under the permit.

(16) The permit cannot be transferred.

(b) A permittee must continue to comply with the permit's terms and

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conditions in the event of permit modification, suspension, cancellation, revocation, or expiration unless specified otherwise by the Federal land manager.

(c) The Federal land manager may include in the permit additional terms and conditions necessary to carry out the purposes of this part, including a bond where warranted.

(d) For activities approved on lands administered by BLM or Reclamation, the Federal land manager may provide permittees with a notice to proceed, which contains site-specific guidance and stipulations for the permittee.

(e) Persons who do not comply with the terms of a permit issued under this part may be subject to permit modification, suspension, revocation, and/or civil or criminal penalties.

### § 49.130 When and how may a permit be modified, suspended, revoked, or cancelled?

(a) *Modification.* The Federal land manager may modify a permit at the permittee's request; or when resource, safety, or other administrative or management reasons make permit modification appropriate; or when there is a violation or a potential violation of a term or condition of a permit issued under this part.

(b) *Suspension.* The Federal land manager may suspend for up to 45 days activities under the permit when resource, safety, or other administrative or management reasons make permit suspension appropriate, or when the permittee violates a term or condition of the permit. If the issue prompting suspension is not resolved within the 45-day period, the Federal land manager may modify, revoke, or cancel the permit as appropriate to the specific circumstance.

(c) *Revocation.* The Federal land manager may revoke a permit when the permittee violates a term or condition of a permit, is later found to be ineligible for the permit, or fails to take the actions necessary for ending a suspension. The Federal land manager will revoke a permit immediately if any person working under the authority of the permit is convicted of a criminal offense under this part or assessed a civil penalty under this part.

(d) *Cancellation.* The Federal land manager may cancel a permit when the permittee requests cancellation, or when resource, safety, or other administrative or management reasons make permit cancellation appropriate. Cancellation of a permit does not imply fault on the part of the permittee.

(e) *Notification of modification, suspension, revocation, or cancellation.* (1) The Federal land manager will notify the permittee of the modification, suspension, revocation, or cancellation verbally or in writing. The Federal land manager will, as soon as practicable, confirm a verbal notification with a written notification. A written notification will be served on the permittee by certified mail, return receipt requested, or another verifiable delivery method, and will explain the reason for the modification, suspension, revocation, or cancellation.

(2) In the case of a suspension, the written notification will also include the conditions or actions necessary for ending the suspension; the anticipated duration of the suspension or schedule for resolution of the conditions that led to the suspension; and a statement that the permit will be modified, revoked, or cancelled if the conditions that led to the suspension are not resolved.

(3) The written notification will inform the permittee how to appeal the modification, revocation, suspension, or cancellation.

(f) A modification, suspension, revocation, or cancellation is in full force and effective immediately upon the permittee's receipt of the written notification of the modification, suspension, revocation, or cancellation.

**§ 49.135 Can a permit-related decision be appealed?**

Yes. Permit applicants and permittees may appeal the denial of a permit application, and the modification, suspension, revocation, or cancellation of an issued permit.

**§ 49.140 What is the process for appealing a permit-related decision?**

A permit-related decision may be appealed using processes defined by the issuing bureau.

(a) Permit-related decisions by BLM may be appealed to the Interior Board of Land Appeals under the process explained at 43 CFR 4.400 through 4.438.

(b) Permit-related decisions by FWS may be appealed under the process explained at 50 CFR 36.41(i).

(c) Permit-related decisions by Reclamation may be appealed under the process used for other types of scientific research and collecting permits issued by Reclamation, which will be specified in writing in the permit-related decision.

(d) Permit-related decisions by NPS may be reconsidered under the process used for other types of scientific research and collecting permits issued by NPS, which will be specified in writing in the permit-related decision.

**§ 49.145 Has OMB approved the information collection provisions of this part?**

BLM, Reclamation, NPS, and FWS use the information collected under this part to manage and protect paleontological resources on and from Federal land. The Office of Management and Budget (OMB) reviewed and approved the information collection requirements contained in this part and assigned OMB Control No. 1093-0008. OMB has approved the information collection requirements for the NPS Research Permit and Reporting System, which includes paleontological permits, and assigned OMB Control No. 1024-0236. A Federal agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

**Subpart C—Management of Paleontological Resource Collections**

**§ 49.200 Where are collections deposited?**

(a) A collection from Federal land made pursuant to a permit issued under this part will be deposited in a repository approved to receive the collection.

(b) The curation of paleontological resources collected from Federal land before September 1, 2022 is governed by

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the terms and conditions of the original collection permit or agreement, rather than by this part.

(c) The Federal land manager, in coordination with the permittee and repository staff, will ensure that the specimens in the collection that further paleontological knowledge, public education, or management of paleontological resources are curated in the approved repository. Specimens that do not further paleontological knowledge, public education, or management of paleontological resources may be placed in working collections or disposed of as determined by the Federal land manager in coordination with appropriate subject matter experts.

### **§ 49.205 What are the requirements for approving a repository to receive a collection?**

(a) The bureaus may approve a repository if:

(1) Repository has facilities and staff that provide curation as defined in this part;

(2) Repository has a scope of collections statement or similar policy document that demonstrates the repository's willingness and ability to curate Federal paleontological resources;

(3) Repository has access to paleontological and/or curatorial staff with adequate experience to successfully prepare and curate paleontological resource collections;

(4) Repository's past and current performance meets applicable departmental standards; and

(5) Repository will not release specific location data to the public except as consistent with § 49.25 or as provided in an agreement between the repository and the bureau.

(b) Once a repository is approved to receive a collection, it will remain approved to curate the collection unless the Federal land manager, after consultation with the permittee and the repository, determines that one or more of the criteria in paragraph (a) of this section is not satisfied. The Federal land manager must refer to Departmental guidance to address this situation.

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### **§ 49.210 What terms and conditions must agreements between the bureau and approved repository contain?**

(a) The Federal land manager will review existing agreements between the bureau and the approved repository to determine if these agreements adequately address the management of the collection. If adequate agreements do not already exist, the Federal land manager will work with the repository to develop a new agreement to cover this collection as well as other collections as appropriate.

(b) Agreements between the bureau and approved repository will contain the following information as deemed appropriate by the parties:

(1) Statement (updated as necessary) that identifies the collection(s) at the approved repository.

(2) Statement that asserts Federal ownership of the collection(s).

(3) Statement of work to be performed by the approved repository.

(4) Statement of the duties and responsibilities of the bureau and of the approved repository for the long-term care of the collection(s).

(5) Statement that the collections are available for scientific and educational uses and that the specific location data may be shared consistent with the Federal land manager's determination under § 49.25.

(6) Description of any special procedures or restrictions for access to or use of collections, consumptive analysis, or reproductions.

(7) Description of when and how the collection(s) may be loaned to other entities, including general parameters such as loan duration, purpose, responsibility, insurance, tracking, and packing/shipping materials.

(8) Statement describing the frequency, methods, and reporting process for inventories.

(9) Statement that all exhibits, publications, and studies of paleontological resources will acknowledge the bureau that administers the collection(s).

(10) Statement describing how copies of any publications or reports resulting from study of the collection(s) will be made available by the publication or report writers to the bureau.

(11) Statement describing how collection management records will be made available to the bureau that administers the collection(s).

(12) Statement that employees of the repository will work to preserve and protect specimens in their care using best professional practices, and will take no actions whereby any of the collection(s) shall or may be encumbered, seized, taken, sold, attached, lost, or stolen.

(13) Effective term of the agreement and procedures for modification, cancellation, suspension, extension, and termination of the agreement, including costs.

(14) Additional terms and conditions as needed to manage the collection(s).

(c) The agreement must be signed by an authorized representative of the approved repository and the Federal land manager.

**§ 49.215 What are the standards for managing the collections?**

(a) Each approved repository must:

(1) Curate museum collections as defined at § 49.5 and consistent with any agreements between the bureau and the approved repository;

(2) Obtain approval of the Federal land manager before conducting or allowing reproduction or consumptive analysis of part or all of the collection, unless this topic is addressed in an agreement between the bureau and the approved repository;

(3) Conduct inventories consistent with Departmental and bureau museum management standards, and report the results to the bureau.

(b) The Federal land manager, in coordination with the repository official and appropriate subject matter experts, may determine that specimens that are found to be redundant, lack adequate associated data, or otherwise are determined not to further paleontological knowledge, public education, or management of paleontological resources may be removed from museum collections and placed into working collections.

(c) The approved repository may charge reasonable fees, consistent with applicable law, to persons and/or institutions that deposit, use, or borrow specimens at that repository that were

collected under this part. Fees may cover labor and material costs incurred by the repository for curating, handling, record keeping, and insuring the collection(s).

**Subpart D—Prohibited Acts**

**§ 49.300 What acts are prohibited?**

(a) A person may not:

(1) Excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any paleontological resource located on Federal land unless this activity is conducted in accordance with the Act and this part.

(2) Exchange, transport, export, receive, or offer to exchange, transport, export, or receive any paleontological resource if the person knew or should have known such resource to have been excavated or removed from Federal land in violation of any provision, rule, regulation, law, ordinance, or permit in effect under Federal law, including the Act and this part.

(3) Sell or purchase or offer to sell or purchase any paleontological resource if the person knew or should have known such resource to have been excavated, removed, sold, purchased, exchanged, transported, or received from Federal land.

(4) Make or submit any false record, account, or label for, or any false identification of, any paleontological resource excavated or removed from Federal land.

(b) A person may return to the Federal land manager paleontological resources collected or obtained in violation of the Act and this part without penalty if deemed appropriate by the Federal land manager.

**Subpart E—Criminal Penalties**

**§ 49.400 What criminal penalties apply to violations of this part?**

(a) Anyone who, on or after March 30, 2009, knowingly commits or counsels, procures, solicits, or employs another person to commit a prohibited act identified in subpart D of this part will, upon conviction, be assessed:

(1) Fines in accordance with 18 U.S.C. 641, 1361, 2314, and 1701, or imprisonment of up to 5 years, or both, if the

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sum of the scientific and commercial values of the paleontological resources involved and the cost of response, restoration, and repair of the resources and sites involved is more than \$500; or

(2) Fines in accordance with 18 U.S.C. 641, 1361, 2314, and 1701, or imprisonment of up to 2 years, or both, if the sum of the scientific and commercial values of the paleontological resources involved and the cost of response, restoration, and repair of the resources and sites involved is \$500 or less.

(b) Scientific and commercial values and the cost of response, restoration, and repair are determined in accordance with subpart G of this part.

(c) In the case of a second or subsequent violation by the same person, the amount of the penalties assessed under this subpart may be doubled.

(d) To the extent that a prohibited act under this subpart involves a violation of other applicable law, the violator may be subject to additional criminal penalties.

### Subpart F—Civil Penalties

#### § 49.500 When can the Federal land manager assess a civil penalty?

(a) The Federal land manager may assess a civil penalty upon any person who violates the provisions of this part or violates a permit issued under this part, in accordance with the process explained in this subpart.

(b) For purposes of this subpart, each violation is considered a separate offense.

#### § 49.505 When and how does the Federal land manager serve a notice of violation?

When the Federal land manager believes that a person has committed a violation of this part, he or she may serve a notice of violation in person, by certified mail, return receipt requested, or other verifiable delivery method upon the person.

#### § 49.510 What is included in the notice of violation?

A notice of violation will include:

(a) A concise statement of the facts believed to show a violation has occurred.

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(b) A citation of the provisions of this part or a permit issued under this part alleged to have been violated.

(c) The amount of civil penalty proposed.

(d) Notification of the right to await the final assessment of civil penalty or to object to the notice of violation and proposed civil penalty, and the right to file a request for hearing of the final assessment of civil penalty. The notice must also inform the person of his or her right to seek judicial review upon the issuance of the final administrative order under this subpart.

(e) The name and contact information of the Federal land manager who is serving the notice of violation.

#### § 49.515 How is an objection to a notice of violation and proposed civil penalty made and resolved?

(a) *Filing objection.* A person served with a notice of violation and proposed civil penalty may file a written objection with the Federal land manager within 30 days of the date the notice was received.

(b) *Content of objection.* The objection must:

(1) Clearly and concisely state the reasons why the person believes that the person did not commit a violation and/or that the proposed civil penalty should be reduced or eliminated;

(2) Be accompanied by any documentation supporting the person's reasons for objecting; and

(3) Be signed by the person or the person's authorized representative.

(c) *Issuing determination.* The Federal land manager will issue a determination, served on the person by a verifiable delivery method, based on the information contained in the written objection or furnished upon further request to the Federal land manager.

(d) *Content of determination.* In the determination, the Federal land manager will:

(1) Sustain the objection and revoke the notice of violation and proposed civil penalty, if the Federal land manager determines that the information warrants a conclusion that no violation occurred;

(2) Deny the objection, if the Federal land manager determines that the information warrants a conclusion that a

violation occurred and that the proposed civil penalty should not be reduced or eliminated; or

(3) Deny the objection in part and sustain it in part, if the Federal land manager determines that the information warrants a conclusion that a violation has occurred, but that the proposed civil penalty should be reduced or eliminated.

**§ 49.520 When will the Federal land manager issue a final assessment of civil penalty?**

The Federal land manager will issue a final assessment of civil penalty:

(a) If the person served with a notice of violation and proposed civil penalty does not file a timely objection; or

(b) If the person does file a timely objection that is denied in whole or in part under § 49.515.

**§ 49.525 How will the Federal land manager calculate the amount of a proposed and final assessment of civil penalty?**

(a) The Federal land manager will determine the amount of the civil penalty by taking into account:

(1) The scientific or commercial value, whichever is greater as determined by the Federal land manager, of the paleontological resource involved;

(2) The cost of response, restoration, and repair of the paleontological resource and the paleontological site involved;

(3) Other factors that the Federal land manager considers relevant, such as prior violations or warnings or evidence of malicious intent;

(4) Information provided under § 49.515 or furnished to the Federal land manager upon his or her request; and

(5) Mitigating factors, which may include return of paleontological resources and whether the person will provide information that may assist the bureau.

(b) Scientific value, commercial value, and the cost of response, restoration, and repair of the paleontological resource and the paleontological site are determined in accordance with subpart G of this part.

(c) In the case of any subsequent violation by the same person, the Federal land manager may calculate a penalty in accordance with paragraph (a) of

this section and double it for that subsequent violation.

(d) The maximum penalty assessed under paragraph (c) of this section for any one violation may not exceed the sum of:

(1) Two times the cost of response, restoration, and repair of paleontological resources and paleontological site damage; plus

(2) Two times the scientific or commercial value, whichever is greater as determined by the Federal land manager, of the paleontological resources and paleontological sites destroyed or not salvaged.

(e) The final assessment of civil penalty may be equal to, less than, or more than the proposed civil penalty.

**§ 49.530 How will the Federal land manager issue the final assessment of civil penalty?**

(a) The Federal land manager will serve the final assessment of civil penalty by certified mail, return receipt requested, or other verifiable delivery method.

(b) The final assessment of civil penalty will include:

(1) The facts and conclusions that are the basis for the Federal land manager's determination that a violation occurred;

(2) The basis for the Federal land manager's determination of the amount of civil penalty assessed;

(3) Notification of the rights to accept the final assessment of civil penalty or, alternatively, to file a request for hearing on the final assessment with a Departmental Cases Hearings Division (DCHD) administrative law judge under § 49.535(a)(2); and

(4) A statement that the civil penalty must be paid within 30 days of the date that the final assessment of civil penalty is received, unless the person served with the final assessment of civil penalty files a request for hearing in accordance with this subpart and the procedures specified in the notice.

**§ 49.535 What are the options and timeframe to respond to the final assessment of civil penalty?**

(a) *Response options.* A person who receives a final assessment of civil penalty may, within 30 days of the date

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the assessment is received, do one of the following:

(1) Accept the final assessment of civil penalty, either in writing, by payment of the final assessment, or by failing to timely file a request for hearing under paragraph (a)(2) of this section; or

(2) File a request for a hearing on the final assessment of civil penalty before a DCHD administrative law judge via:

(i) Registered or certified mail, return receipt requested, or other delivery service method, deliver receipt requested, at DCHD's address specified in the final assessment of the civil penalty; or

(ii) Electronic means in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the final assessment of civil penalty.

(b) *Content of request for hearing.* A request for hearing must:

(1) Be signed by the person who receives the final assessment of civil penalty or a representative qualified to represent that person under 43 CFR 1.3.

(2) Identify the final assessment of civil penalty being challenged.

(3) State clearly and concisely the reasons for challenging the final assessment, including the reasons why the person believes that he or she did not commit a violation and/or that the final assessment of civil penalty should be reduced or eliminated.

(4) State the relief sought and the basis for that relief.

(5) Be accompanied by the following documentation:

(i) A copy of the notice of violation and proposed civil penalty;

(ii) A copy of any objection and supporting documentation filed under § 49.515(a); and

(iii) A copy of the final assessment of civil penalty.

(6) Contain a certificate acknowledging service of the request for hearing with the documentation listed in paragraph (b)(5) of this section to the Office of the Solicitor at the address identified in paragraph (c) of this section.

(c) *Service of request for hearing.* The person filing a request for hearing must simultaneously send a copy of the request and the accompanying docu-

mentation via certified mail, return receipt requested, or other verifiable delivery method to the Solicitor of the Department of the Interior at the address specified in the final assessment of civil penalty.

(d) *Dismissal of hearing request.* (1) If the request for hearing is not received by DCHD within 30 days of the date of receipt of the final assessment, the request for hearing will not be considered and the hearing will be dismissed.

(2) The request for hearing may be dismissed for failing to meet any of the requirements of paragraph (c) of this section.

(e) *Waiver of hearing right.* A person who accepts the final assessment under paragraph (a)(1) of this section waives the right to a hearing.

**§ 49.540 What procedures govern the DCHD hearing process initiated by a request for hearing on the final assessment?**

(a) Upon receipt of a request for hearing under § 49.535(a)(2), DCHD will assign an administrative law judge to preside over the hearing process and issue a decision. DCHD will promptly notify the parties of the assignment. Thereafter, all pleadings, papers, and other documents in the hearing process must be filed directly with that judge, with copies served on the other party.

(b) An attorney from the Office of the Solicitor, DOI, will represent the bureau. The attorney will enter his or her appearance on behalf of the bureau and file all motions and correspondence between the bureau and the person who filed the request for hearing. Subsequently, any service upon the bureau must be made to the attorney.

(c) To the extent not inconsistent with the provisions of this subpart, the rules in 43 CFR part 4, subparts A and B, and in 43 CFR 4.422 through 4.437 will apply to the hearing process under this subpart.

(d) The hearing will be conducted in accordance with 5 U.S.C. 554. The bureau will have the burden of proving by a preponderance of the evidence the fact of the violation and the basis for the amount of the civil penalty. Upon completion of the hearing and incorporation of the hearing transcript in the record, the administrative law judge

will issue a written decision in accordance with § 49.545 and serve it on the parties.

**§ 49.545 What will be included in the administrative law judge's decision?**

(a) The administrative law judge's written decision will set forth:

(1) The findings of fact and conclusions of law;

(2) The reasons and bases for the findings; and

(3) An assessment of the penalty, if any.

(b) The amount of any penalty assessed will:

(1) Be determined in accordance with this subpart and subpart G of this part; and

(2) Not be limited by the amount of the penalty assessed by the Federal land manager under § 49.525 or by any offer of mitigation or remission previously made.

(c) The administrative law judge's decision will become effective 31 days from the date of the written decision unless a timely appeal of the decision is filed under § 49.550.

**§ 49.550 How can the administrative law judge's decision be appealed?**

(a) *Filing appeal.* Within 30 days of the date of the administrative law judge's decision, either party to the hearing process (the person who filed the request for hearing or the bureau) may appeal the administrative law judge's decision to the OHA Director by filing a notice of appeal via:

(i) Registered or certified mail, return receipt requested, or other delivery service method, delivery receipt requested, to the OHA Director's address specified in the administrative law judge's decision; or

(ii) Electronic means in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the administrative law judge's decision.

(b) *Content of notice of appeal.* The notice of appeal must:

(1) Be signed by the person filing the appeal or a representative qualified to represent that person under 43 CFR 1.3.

(2) Identify the administrative law judge's decision being appealed, including the DCHD docket number.

(3) State clearly and concisely the reasons for challenging the decision, including:

(i) The reasons why the person believes that he or she did not commit a violation or that the assessed civil penalty should be reduced or eliminated; and

(ii) A concise but complete statement of the facts relied upon to challenge the decision.

(4) State the relief sought and the basis for that relief.

(5) Be accompanied by the following documentation:

(i) A copy of the notice of violation and proposed civil penalty;

(ii) A copy of the final assessment of civil penalty; and

(iii) A copy of the administrative law judge's decision.

(6) Contain a certificate acknowledging service of the notice with the documentation listed in paragraph (b)(5) of this section on the other party to the hearing process in accordance with paragraph (c)(1) of this section.

(c) *Service.* The person filing a notice of appeal must simultaneously send a copy of:

(1) The notice and the accompanying documentation to the other party to the hearing process via:

(i) Certified mail, return receipt requested, or other verifiable delivery method to the other party's address listed on the administrative law judge's decision; or

(ii) Electronic means, if the other party has previously consented to that electronic means, in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the administrative law judge's decision; and

(2) The notice to DCHD via:

(i) Certified mail, return receipt requested, or other verifiable delivery method to DCHD's address listed on the administrative law judge's decision; or

(ii) Electronic means in accordance with an OHA Standing Order which is available on OHA's website at the web address specified in the administrative law judge's decision.

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(d) *Dismissal of appeal.* If the notice of appeal is not received by the OHA Director within 30 days of the date of the administrative law judge's decision, the notice of appeal will not be considered and the appeal will be dismissed.

(e) *Stay of payment deadline.* If the administrative law judge's decision is appealed to the OHA Director, the deadline for payment of the penalty will be stayed pending resolution of the appeal.

### § 49.555 What procedures govern an appeal of an administrative law judge's decision?

(a) Upon receipt of a notice of appeal filed under § 49.550(a), the OHA Director will appoint an Ad Hoc Board of Appeals to consider the appeal and issue a decision thereon.

(b) To the extent not inconsistent with the provisions of this subpart, the rules in 43 CFR part 4, subparts A, B, and G, will apply to the appeal proceedings under § 49.550.

### § 49.560 When must the civil penalty be paid?

A person assessed a civil penalty has 30 days from the date of the final administrative decision in which to make full payment of the civil penalty, or agree to a payment schedule. For the purposes of this subpart, the final administrative decision is:

(a) The final assessment of civil penalty if the person served with the final assessment does not file a timely request for hearing under § 49.535(a)(2).

(b) The administrative law judge's decision on the request for hearing if a timely appeal to the OHA Director is not filed under § 49.550(a); or

(c) The decision of the Ad Hoc Board of Appeals if a timely appeal of the administrative law judge's decision was filed under § 49.550(a).

### § 49.565 When may a person assessed a civil penalty seek judicial review?

A person may file a petition for judicial review in the United States District Court for the District of Columbia or in the district where the violation occurred, within 30 days of the decision of the Ad Hoc Board of Appeals. For purposes of the Act and this part, that decision will be considered a final ad-

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ministrative order. The deadline for payment of the civil penalty will be stayed pending resolution of the judicial review.

### § 49.570 What happens if a civil penalty is not paid on time?

(a) If the civil penalty is not paid by the required deadlines, the United States may take action to collect the penalty assessed plus interest, attorneys' fees, and collection costs.

(b) Failure to pay a civil penalty assessed under this subpart is a debt to the United States.

(c) Failure to pay a civil penalty assessed under this subpart may prevent a person from obtaining a future authorization for activities related to paleontological resources on Federal land as well as receiving other future Federal funding or assistance.

(d) By assessing a civil penalty under this subpart, the United States does not waive the right to pursue other legal or administrative remedies.

### § 49.575 How will collected civil penalties be used?

Civil penalties collected under this subpart are available without further appropriation to the bureau that administers the Federal land or paleontological resources that were the subject of the violation, and may be used only to:

(a) Protect, restore, repair, prepare, and curate the paleontological resources and sites that were the subject of the action, and to protect, monitor, and study the resources and sites;

(b) Provide educational materials to the public about paleontological resources, paleontological sites, or resource protection; or

(c) Pay rewards under subpart H of this part.

## Subpart G—Determining Scientific Value, Commercial Value, and the Cost of Response, Restoration, and Repair

### § 49.600 How is "scientific value" determined for criminal and civil penalties?

In determining a criminal or civil penalty, the scientific value of a paleontological resource will be based on

the value of the scientific and educational information associated with the resource. This value is the estimated costs of obtaining the scientific and educational information from the disturbed paleontological resource or site if the prohibited act had not occurred. These costs may include, but are not limited to:

- (a) Research design development;
- (b) Fieldwork;
- (c) Preparation of the paleontological specimen;
- (d) Stabilization of the paleontological site;
- (e) Scientific analysis;
- (f) Curation;
- (g) Preparation and production of reports or educational materials; and
- (h) Lost visitor services or experience.

**§ 49.605 How is “commercial value” determined for criminal and civil penalties?**

In determining a criminal or civil penalty, the commercial value of a paleontological resource will be based on comparable sales information, appraisals, current market value, or other information for comparable resources. If there is no comparable sales information, appraisal, market value, or other information, the Federal land manager will determine the commercial value of the paleontological resource using other values such as scientific value under § 49.600 or the cost of response, restoration, and repair of the paleontological resource and/or paleontological site under § 49.610.

**§ 49.610 How is the “cost of response, restoration, and repair” determined for criminal and civil penalties?**

In determining a criminal or civil penalty, the cost of response, restoration, and repair of a paleontological resource and/or paleontological site will include, but not be limited to, the costs of:

- (a) Law enforcement investigations;
- (b) Immediate stabilization of the resource and the site;

(c) Response, restoration, and repair, including, but not limited to, reconstructing or stabilizing the resource or site, salvaging the resource or site, erecting physical barriers or other protective devices or signs to protect the site, and monitoring the site;

(d) Preparation of the paleontological specimen;

(e) Storage and curation of the resources; and

(f) Reporting upon the above activities.

**Subpart H—Forfeiture and Rewards**

**§ 49.700 Will a violation lead to forfeiture of a paleontological resource?**

(a) A paleontological resource related to a violation under this part is subject to forfeiture.

(b) The bureau may either deposit forfeited resources into an approved repository, or transfer or assign administration of the forfeited resources to Federal or non-Federal institutions to be used for scientific or educational purposes.

**§ 49.705 What rewards may bureaus pay to those who assisted in enforcing this part?**

(a) The bureau may pay a reward to the person or persons furnishing information leading to a finding of civil violation or criminal conviction under this part.

(b) The reward may be no more than half of the penalties collected. If several persons provide the information, the bureau may divide the reward among them.

(c) The funds for the reward may come from the penalties collected or from appropriated funds.

(d) An officer or employee of Federal, State, or local government who furnishes information or renders service in the performance of official duties is not eligible for a reward under this section.

**Subpart I—Casual Collection of Common Invertebrate or Plant Paleontological Resources on Bureau of Land Management and Bureau of Reclamation Administered Lands**

**§ 49.800 Is casual collecting allowed on lands administered by NPS or FWS?**

No. Casual collecting of paleontological resources is not allowed on lands administered by NPS or FWS. On those lands, collecting any paleontological resource must be conducted in accordance with a permit as described in subpart B of this part.

**§ 49.805 Where is casual collecting allowed?**

(a) Casual collecting of common invertebrate or plant paleontological resources is allowed on lands administered by BLM, except on BLM-administered land that is closed to casual collecting in accordance with this part, other statutes, executive orders, regulations, proclamations, or land use plans.

(b) Casual collecting of common invertebrate or plant paleontological resources is allowed on lands administered by Reclamation only in locations where the bureau has established a special use area for casual collecting using processes defined in 43 CFR part 423, Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies. Casual collecting is prohibited on Reclamation project land that is administered by NPS or FWS.

(c) Persons interested in casual collecting are responsible for learning which bureau manages the land where they would like to collect paleontological resources, learning if the land is open to casual collecting, and obtaining information about the managing bureau's casual collecting procedures.

**§ 49.810 What is casual collecting?**

(a) Casual collecting means the collecting without a permit of a reasonable amount of common invertebrate or plant paleontological resources for non-commercial personal use, either by surface collection or the use of non-powered hand tools, resulting in only negligible disturbance to the Earth's

surface or paleontological or other resources.

(1) *Common non-vertebrate paleontological resources* means common invertebrate or plant paleontological resources.

(2) *Reasonable amount* means a maximum of 25 pounds of common non-vertebrate paleontological resources per day per person. Where the common non-vertebrate paleontological resources are embedded in rock, the collector, using non-motorized hand tools, may remove a slab or cobble of rock that exceeds 25 pounds in order to preserve the integrity of the embedded specimen.

(3) *Negligible disturbance* means little or no change to the surface of the land and minimal or no effect to natural and other resources.

(4) *Non-commercial personal use* means a use other than for purchase, sale, financial gain, or research.

(5) *Non-powered hand tools* means tools that do not use or are not operated by a motor, engine, or other mechanized power source, and that can be hand-carried by one person.

(b) In order to preserve paleontological or other resources, or for other management reasons, the Federal land manager may establish area-specific limits on casual collecting, including, but not limited to, restricting the weight of common non-vertebrate paleontological resources; limiting the depth of disturbance; establishing dates or locations for collecting; or establishing what paleontological resources in a specific area are not common.

(c) In consultation with knowledgeable paleontologists, the Federal land manager will determine which non-vertebrate paleontological resources are scientifically rare or unique and are therefore not common.

(d) Collecting common non-vertebrate paleontological resources inconsistent with this subpart is a prohibited act and may result in civil or criminal penalties.